

REMARKS

Claim Rejections

Claims 1-4, 7, 8-10, 13, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston (WO 03/036889) in view of Sugaya et al. (2002/0049040) and Bartas (2005/0060535). Claims 6 and 12 are rejected as unpatentable in view of the foregoing, in further view of Nakayama et al. (6,272,335).

Arguments

Applicant submits that the pending claims define subject matter that is patentably distinguishable over the cited prior arts based on the arguments which follow.

Applicant's claim 1 is directed toward: a method capable of indicating a communication quality and being used in a network transmission system having at least a first station and a second station, comprising the steps of: determining the communication quality of the network transmission system according to a data transmitted from the first station to the second station; and indicating the communication quality at the second station, ***wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication quality.***

Applicant's claim 8 is directed toward: a transmission system for network with communication quality indicating capability, comprising: a first station, transmitting a data via a network; a second station, receiving the data from the network; a detecting unit, disposed at the second station for detecting a data receiving condition in real time, and computing a communication according to the same; and an indicating unit, coupled to the detecting unit for indicating the communication quality at the second station, ***wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication quality.***

On. p. 3 of the outstanding Office Action, the Examiner has admitted that both Johnston and Sugaya et al. fail to teach a server capable of interrupting a data transmission between the first and second stations based on the communication

quality. Paragraphs [0009] and [0013] of Bartas are cited as providing this admitted deficiency. However, it is important to note that the interrupting in Bartas is performed by the second software application (See [0013] of Bartas). In addition, although Bartas generally teaches a server in [0009], [0013] clearly teaches that it is the second software application that performs the interrupting (and not the server). In comparison, the present invention recites a "server," which the skilled artisan would appreciate is inherently a piece of **hardware**. Furthermore, Applicant disagrees with the Examiner's conclusion that interrupting a transmission based on the detection of a virus teaches or suggests interrupting a transmission based on communication quality. This disparity, when combined with the completely different modes (software vs. hardware), clearly renders the present invention non-obvious with respect to Bartas in view of the remaining cited art. It follows that the second software application of Bartas cannot be said to teach "a server capable of interrupting a data transmission between the first and second stations basing on the communication quality" of claims 1 and 8.

It follows that even if the teachings of Johnston, Sugaya et al., and Bartas were combined, as suggested by the Examiner, the resultant combination does not suggest: a method capable of indicating a communication quality and being used in a network transmission system having at least a first station and a second station, comprising the steps of: determining the communication quality of the network transmission system according to a data transmitted from the first station to the second station; and indicating the communication quality at the second station, wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication.

Nor does the combination suggest: a transmission system for network with communication quality indicating capability, comprising: a first station, transmitting a data via a network; a second station, receiving the data from the network; a detecting unit, disposed at the second station for detecting a data receiving condition in real time, and computing a communication according to the same; and an indicating unit, coupled to the detecting unit for indicating the communication quality at the second station, wherein the network transmission system further

comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication quality.

In considering the above, the Examiner is respectfully reminded that, it is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious. Instead, the Supreme Court, in *KSR International Co. v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007), the Court stated on p. 14 of the published opinion that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Appellant submits that the above-presented arguments clearly indicate that the Examiner has failed to provide an "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" for combining selected elements of Johnston with selected elements of Sugaya et al. and/or Bartas. *KSR*, 550 U.S. ___, 127 S. Ct. 1727 (2007)(p. 14 of published opinion). It is believed to be abundantly clear that the Examiner has taken selected portions of the three references, in a classic case of hind-sight reconstruction having the benefit of Appellant's disclosure. Clearly, such a combination is not an acceptable combination under 35 U.S.C. §103. The rejections of Appellant's claims as being rendered by the aforementioned combinations of references under 35 U.S.C. §103 is respectfully traversed.

Summary

In view of the foregoing remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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